IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.959 OF 2006

M/s.Sagar Shopping Developers .. Petitioner

Versus

Rampratpsingh & Ors. .. Respondents

Mr.Navin Parikh i/b.Thakore Jariwalla &
Associates for petitioner
Mrs.V.V.Thorat for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 24th February 2006.

P.C.

. Heard Mr.Parikh for petitioner original defendant No.5 and Mrs.Thorat for respondent No.1

original plaintiff. Rule. Respondents waive service.

2. Suit No.2692 of 1994 which is instituted by first respondent in the City Civil Court subsequently impleads petitioner as defendant No.5 and upon such impleadment and service of writ of summons, an application was made by them to permit them to file the written statement in the said suit and the same to be taken on record.

3. Prayer (a) of the motion which is taken out by the petitioners viz., Notice of Motion No.4675 of 2005 seeks a direction to the original plaintiff to serve to the 5th defendant or their Advocates a complete copy of the plaint along with all annexures as also for interim proceedings i.e. notices of motions, affidavits, orders, chamber summons and orders passed therein as well as appeals and any proceedings in the above matter.

4. This rather curious and strange prayer is not pressed before me. What is important to note is the subsequent and the only prayer which was considered by the court below viz., permission to file written statement within two weeks after receipt of papers and proceedings.

5. This notice of motion was placed before the learned Judge and he has disbelieved the version of petitioners as set out in the affidavit in reply, holding that the writ of summons was served and prior thereto also the petitioners being aware of the proceedings, there should not be any concession granted to them and the motion deserved to be dismissed.

6. The written statement which is not filed by the fifth defendant in the above suit after their impleadment vide chamber summons taken out in the year 2002, is still not filed. However,

Mr.Parikh learned Counsel appearing for petiioners states that within the time stipulated by this Court written statement would be filed. He submits that the Court below has erred in not taking liberal view of the matter. He submits that the petitioners were handicapped inasmuch as they did not have complete record with them. Annexures to the plaint and other documents were not supplied and with great difficulty a copy of plaint could be procured by them.

7. Mrs.Thorat for respondents original plaintiffs invites my attention to the correspondence between Advocates on record and states that despite no vakalatnama being filed, petitioner’s Advocate was srangely corresponding with respondent No.1, original plaintiff’s Advocates since 2003. She submits that during all this period, nothing prevented them from filing written statement after taking inspection of the records in court.

8. In writ jurisdiction, which is expected to be exercised to do substantial and complete justice, I do not want to enter into a controversy between Advocates. To say the least, it is unfortunate that the Court proceedings are not taken seriously and the focus is lost completely in such meaningless correspondence. If the Advocates know that they are going to represent parties, it is their plain duty to comply with the procedure for trial of suit viz., CPC. If the writ of summons was not served on the defendant No.5, there was no necessity for petitioners' advocate to carry on correspondence. The very fact that they were carrying on correspondence with respondent No.1 original plaintiff's advocate, demonstrates that they were aware of suit being filed and their impleadment by original plaintiff therein. Be that as it may, now that it is held by the trial Judge that writ of summons in the suit was served on 21st

April 2005 fairness and justice demands that the learned Judge should have granted time to the petitioners to file written statement. Even if the learned Judge has rejected their arguments with regard to the writ of summons and the mandate flowing from the procedural provisions in that behalf, yet, in my view, learned Judge should not have rejected the motion as that would have non suited the petitioners from the proceedings.

9. In the result, the order dated 25th November 2005 in Notice of Motion No.4671 of 2005, impugned in this petition is set aside. Instead of notice of motion being granted in terms of prayers therein, it is directed that the petitioners file the written statement within a period of four weeks from today and if it is so filed, the same will be taken on record by the trial court in the aforesaid suit. Needless to state that if the same is not filed within the

stipulated period, the trial court shall proceed in accordance with law. All other prayers in the motion are specifically rejected. If the petitioners desire, they can always inspect the record of the suit in the court and apply to the Court for taking photocopies of the annexures if they are not supplied by plaintiff's advocates, but that would not mean that time can be extended in any manner. Advocate for petitioners to pay costs quantified at Rs.10,000/- out of which Rs.5000/- shall go to plaintiff and Rs.5000/- shall go to legal aid committee. Petition disposed of.

(S.C.DHARMADHIKARI, J)